

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

X
In the Matter of the Application of DANIEL MOLONEY,
TEMPEST REALTY CORP., LIFFEY VAN LINES, INC.,
and ROSE REALTY CORP.,

Petitioners,

**NOTICE OF
APPEAL**

For a Judgment Pursuant to Article 75 of the
Civil Practice Law and Rules

Index #103822/05

- against -

SHAMROCK BUILDING SYSTEMS, INC.,

Respondent.

X

PLEASE TAKE NOTICE, that Petitioner, TEMPEST REALTY CORP. hereby
appeals to the Appellate Division: First Department, all adverse portions of the
Order/ Decision and Judgment of the Supreme Court: New York County (Kibbie F.
Payne), dated May 16, 2006, which was entered in the Clerk's Office on May 31, 2006.

Dated: New York, New York

June 12, 2006

Yours, etc.

AGULNICK & GOGEL, LLC
Attorneys for Petitioner
321 Broadway - 2nd Floor
New York, New York 10007
(212) 233-9500

By 

William A. Gogel

TO: Agovino & Asselta, LLP
Attorneys for Respondent
170 Old Country Road - Suite # 608
Mineola, New York 11501

jpa\shamrockrose.noe
ed 6/1/06

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
In the Matter of the Application of

DANIEL MOLONEY, TEMPEST REALTY CORP.,
LIFFEY VAN LINES, INC. and
ROSE REALTY CORP.,

Petitioners,

Index No. 103822/05

NOTICE OF ENTRY

Assigned to:
Hon. Kibbie F. Payne

For an Order pursuant to Article 75 of the New York
Civil Practice Law and Rules staying the
Arbitration of a certain controversy at the
American Arbitration Association

- against -

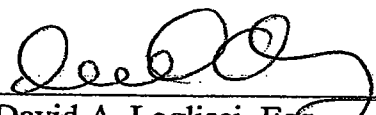
SHAMROCK BUILDING SYSTEMS, INC.,

Respondent.
-----X

S I R S :

PLEASE TAKE NOTICE, that the within is a true copy of an Order and Judgment duly
entered and filed in the office of the Clerk of the County of New York on or about May 31, 2006.

Dated: Mineola, New York
June 1, 2006



David A. Loglisci, Esq.
AGOVINO & ASSELTA, LLP
Attorneys for Respondent,
Shamrock Building Systems, Inc.
170 Old Country Road, Suite 608
Mineola, NY 11501
(516) 248-9880

TO: AGULNICK & GOGEL, LLP
Attorneys for Petitioners
321 Broadway, 2nd Floor
New York, NY 10007
(212) 233-9500

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: KIBBIE F. PAYNE
Justice

PART 4

Application of
DANIEL MOLONEY, TEMPEST REALTY, CORP.,
LIFFEY VAN LINES, INC., and ROSE REALTY CORP.,

INDEX NO. 103822/05

Petitioners,

For an Order Pursuant to Article 75 of the New York
Civil Practice Law and Rules staying Arbitration
of a certain controversy at the American Arbitration
Association,

MOTION DATE 3/23/06

MOTION SEQ. NO. 005

- against -

SHAMROCK BUILDING SYSTEMS, INC.,

MOTION CAL. NO. _____

Respondent.

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: ☒ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion pursuant to CPLR 4403 for a judgment modifying the report of a special referee is granted in part, the cross motion for an order confirming the report is denied, and the petition for an order permanently staying the arbitration pursuant to CPLR article 75 is granted in part as indicated in the attached memorandum.

This constitutes the order and judgment of the court.

FILED
MAY 31 2006
COUNTY

Dated: MAY 16 2006

K.F.P.
J.S.C.

Check one: ☒ FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST

REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

C 45
CL 14

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 4**

Application of DANIEL MOLONEY, TEMPEST
REALTY CORP., LIFFEY VAN LINES, INC.,
and ROSE REALTY CORP.,

Index No. 103822/05

Motion Seq. 005

Petitioners,

JUDGMENT

For an Order Pursuant to Article 75 of
the New York Civil Practice Law and
Rules staying Arbitration of a certain
controversy at the American Arbitration
Association,

-against-

SHAMROCK BUILDING SYSTEMS, INC.,

Respondent.

KIBBIE F. PAYNE, J.:

In this CPLR article 75 proceeding, respondent Shamrock
Buildings Systems, Inc. (Shamrock) moves pursuant to CPLR 4403
for a judgment modifying the report of a special referee to
compel petitioners Tempest Realty, Liffey Van Lines, Inc. and
Rose Realty Corporation to proceed to arbitration. Petitioners
cross-move to confirm the report. For the reasons stated below,
this court grants Shamrock's motion to a limited extent, denies
the cross-motion and denies in part the petition to stay
arbitration.

Moloney is the president of Tempest Realty, Liffey Van Lines
and Rose Realty. Tempest Realty has no employees, and Rose
Realty has three employees, including Moloney and his wife. In

005

That portion of the referee's report which determined that some of the work performed by Shamrock "was not done under the Agreement" and otherwise purported to determine the merits of the underlying dispute is struck as outside the scope of the reference and within the province of the arbitral tribunal.

Accordingly, it is

ORDERED that respondent's motion pursuant to CPLR 4403 to modify the referee's report is granted to the extent indicated above; and it is further

ORDERED that petitioners cross-motion pursuant to CPLR 4403 to confirm the referee's report is denied; and it is further

ORDERED that petitioners' underlying motion for a stay of arbitration pursuant to CPLR article 75 is granted to the extent that the arbitration is permanently stayed as to Daniel Moloney in his individual capacity and Liffey Van Lines, and the motion is otherwise denied; it is further

ORDERED that petitioners Rose Realty and Tempest Realty proceed to arbitration with Shamrock; and it is further

ORDERED that petitioner shall serve a copy of this judgment with notice of entry on the arbitral tribunal within 20 days of its entry.

The foregoing constitutes the decision and judgment of the court.

DATE: MAY 16 2006

Kibbie F. Payne, J.S.C.

FILED
MAY 31 2006
CLERK'S OFFICE
NEW YORK

7 *Norman Goodman*
CLERK

Index No. 103822/2005

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Application of

**DANIEL MOLONEY, TEMPEST REALTY CORP.,
LIFFEY VAN LINES, INC. and ROSE REALTY CORP.,**

**Petitioners,
For an Order Pursuant to Article 75 of the New York
Civil Practice Law and Rules staying Arbitration of a
certain controversy at the American Arbitration
Association,**

-against-

SHAMROCK BUILDING SYSTEMS, INC.,

Respondent.

JUDGMENT

AGOVINO & ASSELT

Attorneys for _____

**170 OLD COUNTRY ROAD, SUITE 608
MINEOLA, NEW YORK 11501
(516) 248-9880**

FILED

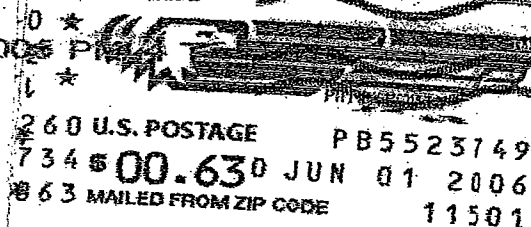
MAY 31 2005

**AT 10:12 A M
N.Y. CO. CLKS. OFFICE**

IO & ASSETA, LLP
COUNTRY ROAD, SUITE 608
EOLA, NEW YORK 11501

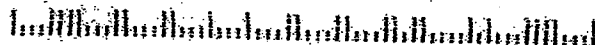
GARDEN CITY NY 115

01 JUN 2006 PM



Agulnick & Gogel, LLP
321 Broadway, 2nd Floor
New York, NY 10007

10007+1116



Index No 03822/05

Year

RII No.

Hon.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK

In the Matter of the Application of
 DANIEL MOLONEY, TEMPEST REALTY CORP., LIFFEY VAN LINES, INC.
 and ROSE REALTY CORP.,

Petitioners,

For an Order pursuant to Article 75 of the New York Civil Practice Law and Rules staying the
 Arbitration of a certain controversy at the American Arbitration Association

- against -

SHAMROCK BUILDING SYSTEMS, INC.,

Respondent.

NOTICE OF ENTRY

AGOVINO & ASSELTA, LLP

Attorneys for

Respondent.

Office and Post Office Address, Telephone

170 OLD COUNTRY ROAD, SUITE 608

MINEOLA, NEW YORK 11501

(516) 248-9880

To

Signature (Rule 130-1.1-a)

Print name beneath

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

Please take notice

☐ NOTICE OF ENTRY

that the within is a (*certified*) true copy of a
 duly entered in the office of the clerk of the within named court on

☐ NOTICE OF SETTLEMENT

that an order
 settlement to the HON.
 of the within named court, at
 on

of which the within is a true copy will be presented for
 one of the judges

at

M

Dated,

Yours, etc.

AGOVINO & ASSELTA, LLP

Attorneys for

To

Office and Post Office Address

170 OLD COUNTRY ROAD, SUITE 608

NOTICE OF ENTRY

PLEASE take notice that the within is a (certified) true copy of a duly entered in the office of the clerk of the within named court on

Dated,

Yours, etc.

AGULNICK & GOGEL, LLC

Attorneys for

Office and Post Office Address
321 BROADWAY, 2ND FLOOR
NEW YORK, N.Y. 10007

To

Attorney(s) for

NOTICE OF SETTLEMENT

PLEASE take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on

M.

Dated,

Yours, etc.

AGULNICK & GOGEL, LLC

Attorneys for

Office and Post Office Address
321 BROADWAY, 2ND FLOOR
NEW YORK, N.Y. 10007

To

Attorney(s) for

Index No. 103822/05 Year
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of DANIEL MOLONEY,
TEMPEST REALTY CORP., LIFREY VAN LINES, INC.,
and ROSE REALTY CORP.,

Petitioners,

For a Judgment Pursuant to Article 75 of the
Civil Practice Law and Rules

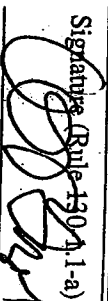
- against -

SHAMROCK BUILDING SYSTEMS, INC.,

Respondent.

NOTICE OF APPEAL

Signature (Rule 130.1-a)



Print name beneath
William A. Gogel

AGULNICK & GOGEL, LLC

Attorneys for Petitioners

Office and Post Office Address, Telephone
321 BROADWAY, 2ND FLOOR
NEW YORK, N.Y. 10007
212-233-9500
FAX (212) 693-1666

To

Attorney(s) for

Service of a copy of the within is hereby admitted.
Dated,

Attorney(s) for